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IN THE

SUPREME COURT OF THE

UNITED STATES

October Term 1967

No. 767

LOUIS SANDERS, et al.,

Petitioners,

vs.

JOHN ERRECA, et al.,

Respondents.

PETITIONERS' REPLY BRIEF (IN SUPPORT OF PETITION FOR CERTIORARI)

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INTRODUCTION

Respondents' central premise is the long discarded doctrine of the Reconstruction period, that violation of state law gives rise to a state remedy, which somehow becomes a substitute for federal jurisdiction.

(See Ex Parte Virginia (1880), 100 U.S. 339).

I

RESPONDENTS' PRINCIPAL AUTHORITY DRAMATIZES THE HOPELESS CONFLICT AMONG THE CIRCUITS

Illustrative of the confusion now present in Circuit Court decisions, is Ream v. Handley (1966, 7th Cir.), 359 F. 2d 728, relied on heavily by Respondents. (Ream held that the facts therein had not ripened into a case or controversy, and hence the question of jurisdiction could not be reached as there was no case of which a court could take jurisdiction: "We hold that no 'genuine and present controversy' exists herein...." 359 F. 2d at 730.)

However, the Court's attention is respectfully invited to the statement in Ream (359 F. 2d at 731) that the federal courts lack jurisdiction under the Civil Rights Act to entertain civil actions for interferences with "property or monetary rights". That conclusion is impossible to reconcile with the many recent Federal cases cited at p. 15 of the Petition for Certiorari. (Also see Sheridan v. Williams (1964, 9th Cir.), 333 F. 2d 581.)

Moreover, in addition to the above conflict of decision, Ream creates a conflict within the

7th Circuit (Compare Progress Development Corp. v. Mitchell, 286 F. 2d 222, and Adams v. City of Park Ridge, 293 F. 2d 585, both granting relief under The Civil Rights Act for deprivation of "property or monetary rights").

It was noted in the Petition for Certiorari (p. 13) that the Circuit Courts which have granted relief in cases involving abuse of the power of eminent domain, cannot agree on the basis for granting relief. Similar disagreement exists between Circuit Courts denying relief, and Ream illustrates it.

Ream, although denying relief, as did the case at bench, conflicts head-on with its reasoning. Ream indicates that an allegation of a threat of taking without just compensation may confer federal jurisdiction (359 F. 2d at 730), while the case at bench indicates the contrary (377 F. 2d at 963-964). Ream indicates that allegations of trespass do not confer federal jurisdiction (359 F. 2d at 731) while the case at bench suggests the contrary (377 F. 2d at 964). Cf. McGuire v. Sadler (1964, 5th Cir.), 337 F. 2d 902, 905; Lowe v. Manhattan Beach City School Dist. (1955, 9th Cir.), 222 F. 2d 258.

Ream in juxtaposition with the other cases cited, illustrates graphically that the issue which petitioners ask the Court to consider is a far-reaching and pressing one. It is ripe for decision. The present state of the federal law places before Federal District Courts, the first and principal battleground of kindred cases, a spectrum of rules ranging from vigorous Federal

judicial protection of the most ephemeral privileges of questionable social worth (e.g., the right to freely gamble in the Nevada casinos; Marshal v. Sawyer (1962, 9th Cir.), 301 F. 2d 639) all the way to decisions such as the one at bench holding that no federal jurisdiction exists to provide redress for anything short of physical seizure.

And, even beyond that, one finds suggestions such as in Ream, that no matter what outrage may have been perpetrated by overreaching state officials, the federal judiciary is impotent because the outrage was directed at "property rights".

In such an environment no one can tell with any degree of reliability whether or not the economically and emotionally costly task of litigating violations of constitutionally protected property rights should be undertaken in the federal courts. The most conscientious counsel in the face of the federal circuit court decisions discussed in the briefs herein, cannot effectively advise his clients. The process of judicial vindication of one's right to economic survival, has acquired attributes reminiscent of the spin of a roulette wheel.

II

RESPONDENTS' ARGUMENTS RE JURISDICTION RELY ENTIRELY ON SUPERSEDED AUTHORITY

Respondents' argument that federal jurisdiction stands or falls on the question of whether the complaint states a claim on which relief can be granted [1], relies on authorities which precede this Court's decision in Bell v. Hood (1946), 327 U.S. 678, which definitively rejected the kind of post hoc ergo propter hoc reasoning attempted by Respondents.

> "Jurisdiction, ... is not defeated as respondents seem to contend by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to

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1/ Respondents' bland assertions as to the obviousness of the jurisdictional question ring hollow when one bears in mind that throughout the District and Circuit Court proceedings, they never mentioned the subject. Indeed, Respondents concede (at p. 6 of Their Brief) that the grounds upon which the District Court dismissed the case went to the merits of the allegations of the amended complaint, and not to jurisdiction.

state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. * * * If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction."

Bell v. Hood, supra, 327 U.S. at 682.

III

WHETHER OR NOT THE ACTS COMPLAINED OF CONSTITUTE A CAUSE OF ACTION UNDER STATE LAW, HAS NO BEARING ON FEDERAL JURISDICTION

Respondents' argument that their acts are "only" fraud and duress, subject to redress under state law, and against which the federal Constitution is impotent (p. 11, Respondents' Brief), brings to mind the words of Mr. Justice Rutledge in Screws v. United States (1945), 325 U.S. 91, 114:

"Strange as the argument is the reason. It comes to this, that abuse of state power creates immunity to federal power. Because what they did violated the state's laws, the nation cannot reach

their conduct. It may deprive the citizen of his liberty and his life. But whatever state officers may do in abuse of their official capacity can give this Government and its courts no concern. This, though the prime object of the Fourteenth Amendment and §20 was to secure these fundamental rights against wrongful denial by exercise of the power of the states.

"The defense is not pretty. Nor is it valid. By a long course of decision ... it has been rejected."

Also see Bell v. Hood, supra, 327 U.S. at 680-681.

CONCLUSION

It is difficult for one not to express sadness and anger at the sight of state officials who stand before the highest tribunal of the Nation and boldly assert that their acts of admitted "fraud and duress" are compatible with the constitutional concept of due process of law - "... a profound attitude of fairness ... particularly between the individual and government...."

Respondents fail to come to grips with the central, underlying issue of the case at bench: Do state officials possess the right to destroy human beings economically without offending the

Federal Constitution? And does it matter what technique is used when the acts in question are characterized by both sides as fraud and duress, and inflict massive damage?

When Petitioners were in the U. S. District Court seeking relief under the due process clause of the Fourteenth Amendment, they were told in so many words by that Court that the Fourteenth Amendment "never actually became effective as a matter of law" (R. Vol. 2, p. 32). As matters stand now, that distinctly ante bellum pronouncement of the District Court may as well be true. For the Petitioners there is no due process - there is only living with the shambles left by fraud and coercion committed under color of state authority.

Petitioners respectfully urge the Court that the Petition for Certiorari be granted.

Respectfully submitted,

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